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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 4127 of 1986
Date of decision: 8.10.2007

Central Warehousing Corporation, Vallah, Amritsar

...Petitioner

Versus

Municipal Corporation, Amritsar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. R.C.Setia, Senior Advocate with
Mr. Anish Setia, Advocate for the petitioner.

Mr. R. D. Bawa, Advocate for the respondents.

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RAJESH BINDAL, J.

The challenge in the present petition is to the assessment of annual rental value for the godowns owned by the petitioner at Amritsar for the purpose of levy of house tax.

2. The dispute in the present case pertains to assessment year 1983-84.

3. Learned Senior Counsel for the petitioner made two fold contentions. Firstly that the annual rental value for the purpose of levy of house tax was required to be determined keeping in view the provisions of the East Punjab Urban Rent Restriction Act, 1949 (for short "1949 Act") and secondly that in case, it was required to be determined on the basis of rent received by the petitioner, still the petitioner never admitted before the authorities below that it received the amount of rent on which the assessment had been made by the authorities. He relied upon the judgment of Hon'ble the Supreme Court in **Devan Daulat Rai Kapoor etc. etc. Vs. New Delhi Municipal Committee and another etc. etc. AIR 1980 Supreme Court 541** and Full Bench judgment of this court in **Banarsi Dass Mahajan Vs. The State of Punjab and another 1990 (1) Punjab Law Reporter 1**.

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4. On the other hand learned counsel for the respondents, also relying upon the same judgment of Full Bench of this Court in Banarsi Dass Mahajan's case (supra), submitted that as far as the first contention of learned Senior Counsel appearing for the petitioner is concerned, the same is liable to be rejected for the sole reason that provisions under consideration in the judgment of Hon'ble the Supreme Court in Devan Daulat Rai Kapoor's case (supra), which was subsequently followed by this Court as well, were different as compared to the provisions in the present case. Section 93 of the Punjab Municipal Corporation Act, 1976 (for short "the Act") clearly provides that in respect of any land or building the fair rent whereof has been fixed under the law relating to rent restriction for the time being in force, the rateable value thereof shall not exceed the annual amount of the fair rent so fixed or the actual rent for which the same has been let, whichever is higher. Accordingly, once provision of the Act itself is clear as to how annual rental value of the building is to be assessed, petitioner cannot rely on the principles of law laid down in Devan Daulat Rai Kapoor's case (supra). On the second contention of the learned Senior Counsel for the petitioner, it was submitted that the assessment has been made on the basis of the admission made by the petitioner itself and same cannot be faulted with.

5. Having heard learned counsel for the parties and perusing the paper book, I am of the view that first plea raised by learned Senior Counsel for the petitioner is liable to be rejected as such. 2nd Proviso of Section 93 of the Act reads as under:-

> "Provided further that in respect of any land or building the fair rent whereof has been fixed under the law relating to rent restriction for the time being in force, the rateable value thereof shall not exceed the annual amount of the fair rent so fixed or the actual rent for which the same has been let, whichever is higher."

6. A bare perusal of provisions of Section 93 of the Act clearly show that in respect of any land or building the fair rent whereof has been fixed under the law relating to rent restriction for the time being in force, the rateable value thereof shall not exceed the annual amount of the fair rent so

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fixed or the actual rent for which the same has been let, whichever is higher. In the present case admittedly the godowns constructed by the petitioner have been let out and fetching actual rent. Infact the same issue was considered by the Full Bench of this Court in Banarsi Dass Mahajan's case (supra) wherein also, it has been opined as under :-

> "Before leaving this aspect of the case, it is significant to note that clause (c) of Section 93 of the Corporation Act has an identical provision as in the Municipal Act and the Supreme Court in Devan Daulat Rai Kapoor's case (supra) was not unaware of that provision when examining the whole provision. Repeatingly and summingly, we hold that the Commissioner must first do the exercise under clause (b) to determine at what figure the building may reasonably be expected to let in accordance with the principles of the Rent Laws, give permissible deductions in the light of the Explanations, deviate to sub-clause (ii) of the first proviso if he can but keep foothold on his deliberations under clause (b), apply both the provisos in the above manner and then determine the annual rateable value."

7. Accordingly, once the provisions of the Act are itself clear which could not possibly be disputed by learned Senior Counsel for the petitioner, there is no merit in the contention of the petitioner that the assessment of the annual rental value is liable to be made as per provisions of the 1949 Act**,** once admittedly the building is let out and the actual rent is being fetched.

8. As far as second contention raised by learned Senior Counsel for the petitioner, I find merit in the same. It was submitted that impugned order is primarily based on the alleged admission made by the petitioner regarding rent fetched by it. Once the claim of the petitioner was that infact the actual storage charges per bag received by it merely 7 paise per bag per month as has been assessed by Municipal Committee, Hoshiarpur as well and not 42 paise per bag. A calculation sheet showing the same is also produced at page 24 of the paper book. It seems that assessment has been made on the basis of alleged statement by the representative of the petitioner

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during the proceedings for assessment of annual rental value for the year 1983-84 to the effect that petitioner, who is handling agent of the Food Corporation of India is getting 42 paise per bag from Food Corporation of India for the entire services provided by it . However, there is no material placed on record by the respondents to show any such admission made by the petitioner. Even otherwise the alleged admission sought to be relied upon by the respondents on account of payment of charges by the Food Corporation of India to the petitioner was as handling agent and the amount was being paid for handling the foodgrains and not rent only for storage in the godowns. The charges received by the petitioner from Food Corporation of India is sought to be explained to include charges for insurance, costs of insecticides and fumigation etc.

9. Once it is found that there is no document showing admission on the part of the petitioner on record, regarding annual rent received by it, the reliance thereon for the purpose of determination of rental value will certainly be faulted. Accordingly, while accepting this contention of the petitioner, I remit the case back to respondent no.2 to re-assess annual rental value of the petitioner for the purpose of determination of the house tax after affording appropriate opportunity of hearing to the petitioner.

10. The writ petition is disposed of in the manner indicated above with no order as to costs.

October 08, 2007 **(Rajesh Bindal)**
Pka **Judge**